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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 RIGOBERTO RODRIGUEZ MACEDO,

10 Petitioner,

11 v.

12 SCOTT SPEER ,

13 Respondent.

14 CASE NO. 2:25-cv-00166-JHC-BAT

15 **REPORT AND**
16 **RECOMMENDATION**

17 Petitioner is serving a state criminal sentence at the Stafford Creek Corrections Center
18 imposed by the King County Superior Court on June 18, 2021 in case number 18-1-06885-8-
19 SEA. *See* Dkt. 1 at 1 (habeas petition). Using a form 28 U.S.C. § 2241 habeas petition, Petitioner
20 challenges this conviction and sentence claiming his Sixth Amendment rights were violated
21 because he was “arraigned without counsel.” Dkt. 1 at 2 and 6. Petitioner also attached motions
22 for a “Brady Order,” Standby Counsel, Judicial Notice, and Certification, and further applied to
23 proceed *in forma pauperis* (IFP). *See* Dkt. 1 (attachments and IFP application).

24 The Court has reviewed the federal habeas petition and recommends it be DISMISSED
25 with prejudice for the following reasons.

26 (1) Although Petitioner submitted a form § 2241 habeas petition, “28 U.S.C. § 2254
27 is the exclusive vehicle for a habeas relief that is available to him because he is a prisoner

1 serving a sentence pursuant to a state court judgment, and challenges that judgment. *White v.*
 2 *Lambert*, 370 F.3d 1002, 1009-10 (9th Cir. 2004), overruled on other grounds by *Hayward v.*
 3 *Marshall*, 603 F.3d 546 (9th Cir. 2010) (en banc). The Court thus finds Petitioner's request for
 4 habeas relief corpus must be considered as brought under 28 U.S.C. § 2254.

5 (2) Petitioner's § 2254 habeas petition is time-barred. Petitioner avers he did not
 6 appeal his King County Superior Court conviction or seek state collateral relief. *See* Dkt. 1.
 7 Because Petitioner challenges his state court conviction and judgment, his § 2254 habeas petition
 8 is subject to a one-year statute of limitations. Under 28 U.S.C. § 2244(d)(1)(A), “[t]he limitation
 9 period shall run from . . . the date on which the judgment became final by the conclusion of
 10 direct review or the expiration of the time for seeking such review” Additionally, “[t]he
 11 time during which a properly filed application for State post-conviction or other collateral review
 12 with respect to the pertinent judgment or claim is pending shall not be counted toward any period
 13 of limitation under this subsection.” *See* 28 U.S.C. § 2244(d)(1) and (2).

14 Petitioner did not appeal his King County Superior Court conviction, and thus his state
 15 court judgment became final for purposes of calculating the federal habeas statute of limitations
 16 when the time to appeal the conviction expired, which under Washington law is 30 days
 17 following imposition of the judgment. *See Gonzalez v. Thaler*, 565 U.S. 134, 147-154 (2012);
 18 Washington State Court Rules of Appellate Procedure (RAP) 5.2. Petitioner's judgment
 19 therefore became final in July 2021, and the habeas statute of limitations began running from that
 20 date. As Petitioner did not properly file any petition for collateral relief, the habeas statute of
 21 limitations continued to run from July 2021 until it expired a year later in July, 2022, well before
 22 the date Petitioner placed the present habeas petition in the prison mail in January 2025.
 23 Petitioner's habeas petition is thus time-barred and should be dismissed.

(3) Because the present habeas petition is time-barred, the Court considers whether there are any equitable reasons to toll or extend the statute of limitations. The Court finds none.

Petitioner obviously knew in 2018 whether he was or wasn't represented at arraignment. As his claim does not rely upon new facts or law made retroactive to collateral relief, there are no legal or equitable grounds to permit Petitioner to now raise the claim in an untimely manner.

The Court accordingly recommends the present habeas petition be dismissed with prejudice as time-barred. If the recommendation is adopted, Plaintiff's motions for Brady Order, Judicial Notice, Standby Counsel and Certification should be stricken as moot.

(4) The Court also recommends DENYING Petitioner's IFP application. Petitioner's trust balance shows he has an average spendable balance of \$246.16. He thus has the resources to pay the \$5.00 filing fee.

(5) If the Court dismisses this case and Petitioner wishes to appeal the dismissal of his § 2254 federal habeas petition, he may do so only after obtaining a certificate of appealability (COA) from a district or circuit judge. A COA may issue only if Petitioner makes “a substantial showing of the denial of a constitutional right.” See 28 U.S.C. § 2253(c)(2). Petitioner may satisfy this standard “by demonstrating that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Issuance of a COA should be denied because no reasonable jurist would disagree the present habeas petition is time-barred. *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

1 (6) This Report and Recommendation is not an appealable order. Therefore,
2 Petitioner should not file a notice of appeal seeking review in the Court of Appeals for the Ninth
3 Circuit until the assigned District Judge enters a judgment in the case.

4 Objections, however, may be filed no later than **February 11, 2025**. The Clerk shall note
5 the matter for **February 14, 2025**, as ready for the District Judge's consideration. The failure to
6 timely object may affect the right to appeal.

7 DATED this 28th day of January, 2025.

8 
9 BRIAN A. TSUCHIDA
10 United States Magistrate Judge